

REMARKS

As an initial matter, Applicant appreciates the Examiner's acceptance of the Replacement Drawings Applicant filed along with the Amendment dated October 6, 2003, and the reconsideration and withdrawal of the objection to the drawings.

By this Amendment After Final, Applicant proposes amending claims 1 and 60. No new matter has been added. Claims 1-11 and 13-95 are present in the application. From those claims, claims 7, 9, 11, 66, 68, 69, and 90-95 have been withdrawn.

Claims 90-95 Were Improperly Withdrawn

In the Amendment filed October 6, 2003, Applicant added new claims 90-95 which are "readable" on the elected species of Fig. 4 and which are generic to the species of Figs. 1, 2, and 4. The final Office Action, however, has withdrawn Applicant's new claims 90-95, asserting that they "read on a nonelected species and are according [sic] withdrawn from examination." Final Office Action at 2.

Applicant respectfully traverses the final Office Action's withdrawal of claims 90-95 at least because the mere fact that claims 90-95 "read on" non-elected species is not a legally proper ground for withdrawing claims from consideration on the merits. Rather, a proper analysis for determining whether a claim should be examined or withdrawn focuses on whether the claim reads on the elected species, not whether the claim also reads on non-elected species. In fact, every generic claim, by definition, reads on at least one non-elected species. In addition, a generic claim, by definition, also reads on an elected species. Accordingly, generic claims are not withdrawn from

consideration merely because they read on additional species other than the elected species.

Applicant respectfully submits that claims 90-95 read on elected species of Fig. 4 at least because those claims do not recite subject matter that prevents them from reading on Fig. 4. Therefore, although claims 90-95 are generic to the species of Figs. 1 and 2 in addition to the elected species of Fig. 4, they should be examined on the merits. Accordingly, Applicant respectfully requests reconsideration of the final Office Action's withdrawal of claims 90-95 from examination on the merits, and rejoinder and examination on the merits of those claims.

Claim 69 Was Improperly Withdrawn

In the Amendment filed October 6, 2003, Applicant amended claim 69 to read on the elected species of Fig. 4, and at Page 20, footnote 1 of that Amendment, Applicant noted that "claim 69 reads on the elected species of Fig. 4." Despite that prior claim amendment and remark, the final Office Action continues to withdraw claim 69 from consideration without providing any explanation for that withdrawal.

Applicant respectfully submits that claim 69 should have been examined on the merits because that claim reads on the elected species of Fig. 4. To permit an examination on the merits of claim 69 as well as claims 90-95, Applicant respectfully requests that the Examiner enter this Amendment After Final and allow all of the pending claims for the reasons explained below.

The Section 102(b) and 103(a) Rejections Should Be Withdrawn

In the final Office Action, claims 1-6, 8, 10, 13-15, 18-24, 26, 34-39, 48, 49, 60-65, 67, 70-72, 75-79, 81, and 89 were rejected under either 35 U.S.C. § 102(b) or 35 U.S.C. § 103(a) based on Street (U.S. Patent No. 6,017,351). The only independent claims included in those rejections are claims 1 and 60. Applicant has amended those claims, thereby obviating the rejections based on Street. Therefore, Applicant respectfully submits that claims 1 and 60 should be patentably distinguishable from Street because that reference does not disclose or suggest all of the subject matter recited in those amended claims, as will be explained in more detail below.

Independent Claim 1 is Allowable

Applicant's amended independent claim 1 recites a device including, among other elements, an envelope "configured as one of a glove and a mitten comprising at least one thumb portion." The Street reference fails to disclose or suggest at least that recited subject matter.

The Street reference discloses a method and cosmetic abrasive scrubbing pad for scrubbing and removing detritus (such as dead skin or dander), soil, and other foreign matter from the epidermis. In particular, the embodiment of cosmetic abrasive scrubbing pad depicted in Figs. 12 and 13 includes an abrasive pad mitt 100 defined by a sleeve having first and second permanently stitched or attached abrasive segments 110 and 112, and an opening 118 sized to receive a user's hand.

Rather than disclosing or suggesting Applicant's above-recited subject matter, however, according to Street, "[t]he two abrasive segments 110, 112 are positioned on

opposing sides of mitt 100, as best seen in Fig. 13, and are preferably disposed to present abrasive exterior surfaces having differing grades of abrasive so that a user can select and use either side by rotating the inserted hand within the mitt 100 to select the appropriate cosmetic abrasive pad surface for scrubbing. . . .” Col. 9, lines 50-56.

In other words, in addition to not disclosing at least one thumb portion as recited in Applicant’s claim 1, the Street reference actually teaches away from being modified to include a thumb portion at least because if the Street mitt 100 shown in Figs. 12 and 13 were modified to include a thumb portion, a user would no longer be able to “rotat[e] the inserted hand within the mitt 100 to select the appropriate cosmetic pad surface for scrubbing. . . .” Therefore, not only does the Street reference fail to disclose all of the subject matter recited in Applicant’s amended independent claim 1, but also the Street reference actually teaches away from Applicant’s recited subject matter. Accordingly, Street neither discloses nor suggests Applicant’s amended independent claim 1, and claim 1 is patentably distinguishable from Street.

Independent Claim 60 is Allowable

Applicant’s amended independent claim 60 recites a device including, among other elements, an envelope “configured as one of a glove and a mitten comprising at least one thumb portion.” The Street reference fails to disclose or suggest at least that recited subject matter for reasons at least similar to those outlined with respect to claim 1. Therefore, Street neither discloses nor suggests Applicant’s amended independent claim 60, and claim 60 is patentably distinguishable from Street.

In the final Office Action, claims 16, 17, 25, 27-33, 40-47, 50-59, 73, 74, 80, and 82-88 were rejected under 35 U.S.C. § 103(a) based on Street in view of one or more of the following references: Snyder et al. (U.S. Patent No. 4,319,956); Ginger et al. (U.S. Patent No. 4,347,931); and Gruenbacher et al. (U.S. Patent No. 6,508,602). Since each of those claims depends from one of the above-mentioned independent claims, those dependent claims should be allowable for at least the same reasons as their corresponding independent claims.

Conclusion

For at least the reasons set forth above, independent claims 1 and 60 should be allowable. Furthermore, independent claims 90 and 93 should be rejoined as outlined above, and should be allowable at least for the reasons outlined in Applicant's Amendment filed October 6, 2003. Dependent claims 2-6, 8, 10, 13-59, 61-65, 67, 69, 70-89, 91, 92, 94, and 95 depend from one of independent claims 1, 60, 90, and 93. Consequently, those dependent claims should be allowable for at least the same reasons the claims from which they depend are allowable.

Therefore, Applicant respectfully requests entry of this Amendment After Final, the reconsideration of this application, the withdrawal of the outstanding claim rejections, and the allowance of claims 1-6, 8, 10, 13-65, 67, and 70-95. In addition, since generic claims 1 and 60 are allowable, claims 7, 9, 11, 66, and 68 should be rejoined and examined.

If the Examiner believes that a telephone conversation might advance prosecution, the Examiner is cordially invited to call Applicant's undersigned representative at (571) 203-2739.

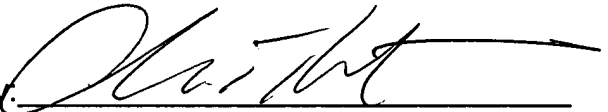
Applicant respectfully submits that the Office Action contains numerous assertions concerning the related art and the claims. Regardless of whether those assertions are addressed specifically herein, Applicant declines to automatically subscribe to them.

Please grant any extensions of time required to enter this response and charge any additional required fees to our Deposit Account No. 06-0916.

Respectfully submitted,

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